UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

JOSEPH DARRYL GAINES]	
Petitioner,]	
]	
V.]	No. 3:07-0943
]	Judge Trauger
CHERRY LINDAMOOD, WARDEN]	
Respondent.]	

ORDER

In accordance with the Memorandum contemporaneously entered, the Court finds merit in respondent's Motion to Dismiss (Docket Entry No. 7). Therefore, respondent's motion is GRANTED and this action is hereby DISMISSED. Rule 8(a), Rules - - § 2254 Cases.

Should the petitioner file a timely Notice of Appeal, such Notice shall be treated as an application for a Certificate of Appealability, 28 U.S.C. § 2253(c)(2), which will NOT issue because the petitioner has been unable to make a substantial showing of the denial of a constitutional right.

It is so ORDERED.

Aleta A. Trauger

United States District Judge